



## Forthcoming Grand Chamber judgment concerning the monitoring of an employee's electronic communications

The European Court of Human Rights will be delivering a **Grand Chamber** judgment<sup>1</sup> in the case of **Bărbulescu v. Romania** (application no. 61496/08) at a public hearing on 5 September 2017 at 9.30am in the Human Rights Building, Strasbourg.

The case concerns the decision of a private company to dismiss an employee after monitoring his electronic communications and accessing their contents, and the alleged failure of the domestic courts to protect his right to respect for his private life and correspondence.

### Principal facts and complaints

The applicant, Bogdan Mihai Bărbulescu, is a Romanian national who was born in 1979 and lives in Bucharest.

From 1 August 2004 until 6 August 2007 Mr Bărbulescu was employed by a private company as an engineer in charge of sales. At his employers' request, he created a Yahoo Messenger account for the purpose of responding to clients' enquiries. On 13 July 2007 Mr Bărbulescu was informed by his employer that his Yahoo Messenger communications had been monitored from 5 to 13 July 2007 and that the records showed he had used the internet for personal purposes. Mr Bărbulescu replied in writing that he had only used the service for professional purposes. He was presented with a transcript of his communication including transcripts of messages he had exchanged with his brother and his fiancée relating to personal matters. On 1 August 2007 the employer terminated Mr Bărbulescu's employment contract for breach of the company's internal regulations that prohibited the use of company resources for personal purposes.

Mr Bărbulescu challenged his employer's decision before the courts complaining that the decision to terminate his contract was null and void as his employer had violated his right to correspondence in accessing his communications in breach of the Constitution and Criminal Code. His complaint was dismissed on the grounds that the employer had complied with the dismissal proceedings provided for by the Labour Code and that Mr Bărbulescu had been duly informed of the company's regulations.

Mr Bărbulescu appealed claiming that e-mails were protected by Article 8 (right to respect for private and family life, the home and correspondence) of the European Convention on Human Rights. In a final decision on 17 June 2008 the Court of Appeal dismissed his appeal and, relying on European Union law, held that the employer's conduct had been reasonable and that the monitoring of Mr Bărbulescu's communications had been the only method of establishing whether there had been a disciplinary breach.

Relying in particular on Article 8 (right to respect for private and family life, the home and correspondence) of the European Convention on Human Rights, Mr Bărbulescu complains that his employer's decision to terminate his contract after monitoring his electronic communications and accessing their contents was based on a breach of his privacy and that the domestic courts failed to protect his right to respect for his private life and correspondence.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Procedure

The application was lodged with the European Court of Human Rights on 15 December 2008.

In its Chamber judgment of 12 January 2016, the European Court of Human Rights held, by six votes to one, that there had been no violation of Article 8 of the Convention, finding that the domestic courts had struck a fair balance between Mr Bărbulescu's right to respect for his private life and correspondence under Article 8 and the interests of his employer. The Court noted, in particular, that Mr Bărbulescu's private life and correspondence had been engaged. However his employer's monitoring of his communications had been reasonable in the context of disciplinary proceedings.

On 6 June 2016 the case was referred to the Grand Chamber at Mr Bărbulescu's request.

The Government of France and the European Trade Union Confederation (ETUC) were granted leave to intervene in the written proceedings as third parties.

A Grand Chamber hearing was held on 30 November 2016.

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.